

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 HILDA BUNDRICK,

11 Plaintiff,

v.

12 ALLSTATE FIRE AND CASUALTY
13 INSURANCE COMPANY, a foreign
14 corporation, and RACHELLE MEADE, an
individual,

15 Defendants.

CASE NO. C20-1334-JCC

ORDER

16 This matter comes before the Court on Plaintiff Hilda Bundrick's motion to remand and
17 for attorney fees (Dkt. No. 10) and Defendants' motion to dismiss (Dkt. No. 7). Having
18 thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument
19 unnecessary and hereby GRANTS in part and DENIES in part Plaintiff's motion to remand and
20 for attorney fees and DENIES without prejudice Defendants' motion to dismiss for the reasons
21 explained herein.

22 **I. BACKGROUND**

23 Plaintiff Hilda Bundrick was rear-ended on January 16, 2015. (Dkt. No. 1-1 at 4.) The
24 driver of the vehicle that struck Ms. Bundrick did not have sufficient liability insurance coverage
25 to pay for all of Ms. Bundrick's damages. (*Id.* at 4–5.) What happened next is unclear. Ms.
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1 Bundrick alleges that “Allstate learned about the crash . . . shortly after the collision occurred,”
 2 but also states that she did not make a claim for uninsured motorist benefits until nearly five
 3 years later, on December 18, 2019. (*Id.* at 4.) In any event, Ms. Bundrick alleges that once she
 4 submitted the claim, Allstate and its claims adjuster, Rachelle Meade, failed to respond in a
 5 timely manner thereby breaching their contract with Ms. Bundrick, their duty of good faith
 6 toward her, and Washington’s Insurance Fair Conduct Act (“IFCA”), Wash. Rev. Code
 7 § 48.30.010, and Consumer Protection Act, Wash. Rev. Code § 19.86.020. (*Id.* at 5–10.)

8 Ms. Bundrick filed her complaint in Snohomish County Superior Court on August 3,
 9 2020, (*id.* at 11), and, after being served on August 30, 2020, (Dkt. No. 1 at 7), Allstate timely
 10 removed on September 8, 2020, alleging that the Court has diversity jurisdiction pursuant to 28
 11 U.S.C. § 1332, (*id.* at 2).

12 Ms. Bundrick moves to remand because she and Ms. Meade are both residents of
 13 Washington. (*See generally* Dkt. No. 10.) Ms. Bundrick also requests that the Court award her
 14 attorney fees incurred in filing her motion. (*Id.* at 5–6.) Allstate concedes that Ms. Meade is a
 15 Washington citizen and does not dispute that if her citizenship is considered, the Court lacks
 16 subject-matter jurisdiction over this action. (*See* Dkt. No. 1 at 3.) However, Allstate argues that
 17 the Court should disregard Ms. Meade’s citizenship because she was fraudulently joined. (*See*
 18 *generally id.*) Allstate also argues that fees are inappropriate even if the Court remands. (*See id.*
 19 at 13.)

20 **II. DISCUSSION**

21 **A. Fraudulent Joinder**

22 “Diversity removal requires complete diversity, meaning that each plaintiff must be of a
 23 different citizenship from each defendant.” *Grancare, LLC v. Thrower ex rel. Mills*, 889 F.3d
 24 543, 548 (9th Cir. 2018). “In determining whether there is complete diversity, district courts may
 25 disregard the citizenship of a non-diverse defendant who has been fraudulently joined.” *Id.*
 26 “[T]he test for fraudulent joinder and failure to state a claim under Rule 12(b)(6) are not

1 equivalent.” *Id.* at 549. Instead, the test for fraudulent joinder is much more stringent: “a federal
 2 court must find that a defendant was properly joined and remand the case to state court if there is
 3 a ‘possibility’ that a state court would find that the complaint states a cause of action against any
 4 of the [non-diverse] defendants.’” (*Id.* (quoting *Hunter v. Philip Morris USA*, 582 F.3d 1039,
 5 1046 (9th Cir. 2009)).

6 Allstate argues that there is no possibility a state court could conclude that Plaintiff’s
 7 complaint states a claim against Ms. Meade because Ms. Meade was not a party to the insurance
 8 contract, IFCA applies only to insurers and not adjusters, and the Washington Supreme Court has
 9 held that insurance adjusters are not subject to a duty of good faith, which is necessary for
 10 Plaintiff’s remaining claims. (*See* Dkt. No. 12 at 3–9.)

11 The Court recently examined this issue and concluded that the Washington Supreme
 12 Court’s opinion in *Keodalah v. Allstate Insurance Company*, 449 P.3d 1040 (Wash. 2019) leaves
 13 open the possibility that an insurance adjuster may be subject to a duty of good faith under
 14 Washington common law. *See generally Fiorito v. Bankers Standard Ins. Co.*, 2020 WL
 15 4333779, slip op. (W.D. Wash. 2020). Allstate urges the Court to reconsider its analysis in
 16 *Fiorito* but does not cite any intervening change in the law. In the absence of intervening
 17 authority, the Court declines to do so. Accordingly, for the reasons stated in *Fiorito*, the Court
 18 concludes that Ms. Meade was not fraudulently joined.

19 **B. Attorney Fees**

20 “[A] court may award costs and attorney’s fees under § 1447(c) only where the removing
 21 party lacked an objectively reasonable basis for seeking removal.” *Grancare*, 889 F.3d at 552.
 22 “[T]he degree of clarity in the relevant law at the time of removal is a relevant factor in
 23 determining whether a defendant’s decision to remove was reasonable.” *Id.* Although the
 24 undersigned has concluded that the Washington Supreme Court left open the possibility that
 25 insurance adjusters may be subject to a common law duty of good faith, the import of *Keodalah*
 26 is not entirely clear, and at least one other judge in this district appears to have interpreted

1 *Keodalah* differently. See *Kolova v. Allstate Ins. Co.*, 438 F.Supp.3d 1192, 1197 (W.D. Wash.
2 2020). Because the import of *Keodalah* is still unsettled, Allstate had an objectively reasonable
3 basis for removing and an award of costs and attorney fees is not appropriate.

4 **III. CONCLUSION**

5 For the foregoing reasons, Plaintiff Hilda Bundrick's motion to remand (Dkt. No. 10) is
6 GRANTED and her motion for attorney fees is DENIED. Defendants' motion to dismiss (Dkt.
7 No. 7) is DENIED without prejudice as moot.

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9 DATED this 2nd day of November 2020.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE